

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CONNIE PEREZ, ET AL.,

Plaintiffs,

V.

FIRST FLEET, INC., ET AL.,

## Defendants.

Case No.: 2:19-cv-00755-KJD-DJA

## Order

Pending before the Court is Plaintiffs' Motion for Extension of Time for Service of Process and Complaint on Defendant Dean Eakins and for Service by Publication (ECF No. 26), filed on October 24, 2019. The Motion requests that Plaintiffs be allowed to serve Defendant Dean Eakins by publication. In doing so, Plaintiffs argue that such service is needed because (1) they have identified four possible addresses, (2) attempted service on two of the addresses including the most possible match 12 times, and (3) have no other way to determine the whereabouts of Defendant Eakins. (ECF No. 26, 3-4).

Plaintiffs request a ninety (90) day extension of time to serve under Fed.R.Civ.P. 4(m), which expired on October 28, 2019. Rule 4m states:

If a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Courts have broad discretion to extend time for service under Rule 4(m). *Efaw v. Williams*, 473 F.3d 1038, 1041(9th Cir.2003). The 120-day period for service contained in Rule 4(m) “operates not as an outer limit subject to reduction, but as an irreducible allowance.” *Henderson v. United States*, 517 U.S. 654, 661 (1996). “On its face, Rule 4(m) does not tie the hands of the district

1 court after the 120-day period has expired. Rather, Rule 4(m) explicitly permits a district court to  
2 grant an extension of time to serve the complaint after that 120-day period.” *Mann v. American*  
3 *Airlines*, 324 F.3d 1088, 1090 (9th Cir.2003). Moreover, the Advisory Committee Notes to Rule  
4 4(m) state that the rule “explicitly provides that the court shall allow additional time if there is  
5 good cause for the plaintiff’s failure to effect service in the prescribed 120 days, and authorizes the  
6 court to relieve a plaintiff of the consequences of an application of [Rule 4(m)] even if there is no  
7 good cause shown.” See Fed.R.Civ.P. 4(m), Advisory Committee Notes, 1993 Amendments.  
8 Generally, “good cause” is equated with diligence. See Wright & Miller, Federal Practice and  
9 Procedure: Civil 3d § 1337.

10 The Court has little difficulty finding good cause for the requested extension. The exhibits  
11 attached from Plaintiffs’ process server (ECF No. 26, 10-15) provide a detailed breakdown of the  
12 many efforts that have been made to effectuate service in this matter. Thus, the request for ninety  
13 (90) additional days to complete service is granted.

14 Plaintiffs’ also request service by publication. Fed. R. Civ. P. 4(e)(1) addresses service by  
15 publication in federal actions. Rule 4(e)(1) states that an individual may be served by following  
16 state law for serving summons in an action brought in courts of general jurisdictions in the state  
17 where the district court is located, or where service is made. Nevada Rules of Civil Procedure  
18 4.4(c) and 4.4(c) subsections (1), (2), (3), and (4) govern service by publication as an alternative  
19 method of service. The current version of Nevada Rule reads in pertinent part as follows:

20 4.4(c) Service by Publication. If a party demonstrates that the service methods  
21 provided in Rules 4.2, 4.3, and 4.4(a) and (b) are impracticable, the court may, upon  
22 motion and without notice to the person being served, direct that service to be made  
by publication.

23 4.4(c)(1) Conditions for Publication. Service by publication may only be ordered  
when the defendant

24 (A) cannot, after due diligence, be found;  
25 (B) by concealment seeks to avoid service of the summons and complaint;  
or  
26 (C) is an absent or unknown person in an action involving real or person  
property under Rule 4.4(c)(3).

1           4.4(c)(2) Motion Seeking Publication. A motion seeking an order for service by  
2           publication must:

- 3           (A) through pleadings or other evidence establish that:  
4            (i) a cause of action exists against the defendant who is to be served;  
5            and  
6            (ii) the defendant is necessary or proper party to the action;  
7           (B) provide affidavits, declarations, or other evidence setting forth specific  
8           facts demonstrating the efforts that the plaintiff made to locate the  
9           defendant;  
10           (C) provide the proposed language of the summons to be used in the  
11           publication, briefly summarizing the claims asserted and the relief sought  
12           and including any special statutory requirements;  
13           (D) suggest one or more newspapers or other periodicals that are reasonably  
14           calculated to give the defendant actual notice of the proceedings; and  
15           (E) if publication is sought based on the fact that the defendant cannot be  
16           found, provide affidavits, declarations, or other evidence establishing the  
17           following information:  
18            (i) the defendant's last-known address  
19            (ii) the date during which the defendant resided at that location; and  
20            (iii) confirmation that the plaintiff is unaware of any other address  
21           at which the defendant has resided since that time, or at which the  
22           defendant can be found.

23           4.4(c)(4) The Order for Service by Publication.

- 24           (A) In order for service by publication, the court must direct publication to  
25           be made in one or more newspapers or other periodicals published in  
26           Nevada; in the state, territory, or foreign country where the defendant is  
27           believed to be located; or any combination of locations. The court's  
28           designated location must be reasonably calculated to give the defendant  
          actual notice of the proceeding. The service must be published at least once  
          a week for a period of four weeks.  
         (B) If publication is ordered and the plaintiff is aware of the defendant's  
          last-known address, the plaintiff must also mail a copy of the summons and  
          complaint to the defendant's last known address. The court may also order  
          that additional notice be sent under Rule 4.4(d).  
         (C) Service by publication is complete four weeks from the later of:  
          (i) The date of the first publication; or  
          (ii) the mailing of the summons and complaint, if mailing is  
          ordered.

29           For a party to move for service by publication, the party must establish the service methods  
30           in Rules 4.2, 4.3, and 4.4(a) and (b) are impracticable. NRCP 4.4 (c). Rules 4.2 and 4.3 pertain  
31           to personal service within Nevada, and personal service outside Nevada, respectively. Rule 4.4(a)  
32           and (b) cover statutory service and court-ordered service, respectively. The Court finds that  
33           Plaintiffs' request to serve by publication is appropriate because the service methods established  
34           by Rules 4.2, 4.3, and 4.4(a) and (b) are impracticable in this case.

1 For the Court to determine if service by publication itself is appropriate, there are two key  
2 factors to consider. The first is whether plaintiffs exercised due diligence in attempting to effect  
3 personal service on defendant (NRCP 4.4(c)(1)), and the second is whether the newspaper or  
4 periodical plaintiffs is attempting to publish in is reasonably calculated to give the defendant actual  
5 notice of the proceedings. NRCP 4.4(c)(2)(D).

6 Here, the Court finds that Plaintiffs have exercised due diligence in their attempted  
7 personal service of Eakins. They utilized a process service to identify the best possible match and  
8 second best possible match for addresses; they confirmed the best possible match was not the  
9 correct address and attempted service 12 times at the second best possible match. (ECF No. 26,  
10 4). Additionally, Eakins appears to be aware of the existence of this action as counsel for  
11 Defendant First Fleet, Inc. represented that if Eakins is served, he plans to file an Answer on his  
12 behalf. (ECF No. 26, 41).

13 However, Plaintiffs do not identify which newspaper or periodical Plaintiff will seek to  
14 utilize service by publication. As this is required by the Rule, the Plaintiffs shall file a notice  
15 within seven (7) days of the issuance of this order identifying the publications in the newspaper(s)  
16 or periodical(s) Plaintiffs will publish in. The Court notes that Plaintiffs indicate that they have  
17 information that may suggest Eakins resides in Arizona. So, Plaintiffs must ensure that the  
18 publications selected are reasonably calculated to give Eakins actual notice of the proceedings.

19 Plaintiffs' counsel also seeks to withdraw from representation of two of the three Plaintiffs  
20 – Connie Perez and Ramiro Lopez. (ECF No. 27). He indicates that all efforts to contact those  
21 Plaintiffs have been unsuccessful. (*Id.*). Pursuant to Local Rule ("LR") IA 11-6, "[n]o attorney  
22 may withdraw after appearing in a case except by leave of Court after notice has been served on  
23 the affected client and opposing counsel." *See* LR IA 11-6(b). Having reviewed the motion, the  
24 Court finds that requirements of LR IA 11-6(b) have been met. The Court will require that  
25 Plaintiffs Connie Perez and Ramiro Lopez notify the Court by November 22, 2019 as to their intent  
26 to proceed pro se or with other representation. Failure to do so may result in dispositive sanctions.

27 Accordingly,

1       **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Extension of Time for Service  
2 of Summons and Complaint on Defendant Dean Eakins and for Service by Publication (ECF No.  
3 26) is **granted**.

4       **IT IS FURTHER ORDERED** that the time for service under Fed.R.Civ.P. 4(m) is  
5 extended to **January 27, 2020** for Plaintiffs to effectuate service on Defendant Dean Eakins.

6       **IT IS FURTHER ORDERED** that Plaintiffs may effective service by publication, but  
7 must file a notice with the Court within 7 days of the publications in the newspaper(s) or  
8 periodical(s) Plaintiffs will publish in that are reasonably calculated to give Defendant Dean  
9 Eakins actual notice of the proceedings.

10       **IT IS FURTHER ORDERED** that Plaintiff Counsel's Motion to Withdraw as Counsel  
11 for Plaintiffs Ramiro Lopez and Miguel Pedroza is **granted**.

12       **IT IS FURTHER ORDERED** that Plaintiffs Ramiro Lopez and Miguel Pedroza shall  
13 notify the Court as to whether they intend to proceed pro se or retain counsel by **November 22,**  
14 **2019**. Failure to notify the Court as to their representation status may subject them to dispositive  
15 sanctions, including a recommendation for dismissal of this action.

16       **IT IS FURTHER ORDERED** that the Clerk of the Court shall add the last known  
17 addresses of Plaintiffs Ramiro Lopez and Miguel Pedroza to the civil docket and send a copy of  
18 this Order to Defendants' last known addresses:

19                   Ramiro Lopez  
20                   3515 East Tonopah  
21                   Las Vegas, NV 89030

                         Miguel Pedroza  
                         3515 East Tonopah  
                         Las Vegas, NV 89030

23                   Dated: November 1, 2019.

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                         Daniel J. Albregts  
                         United States Magistrate Judge